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Patience wearing thin on Kansas side of the Republican River

ART HOVEY / Lincoln Journal Star | Posted: Saturday, August 18, 2007 7:00 pm

CONCORDIA, Kan. — They kid around in Kansas, just like they do in Nebraska, and the laughter rang out loudly from the breakfast bunch at Kristy's restaurant in Concordia last week.

Somebody from a table of about eight mostly middle-aged men had just explained how he had slipped a for sale sign onto a pickup belonging to somebody at the next table.

Imagine all the questions for the victim of a practical joke in a small town of perhaps 5,000 people.

But Wilber Chartier wasn't kidding a few minutes later when he slid into a nearby booth and answered questions about how Nebraska and Kansas are going to resolve their differences over the Republican River — a familiar, if much diminished presence along Concordia's northern outskirts.

"They're going to have to give Kansas more water is what they're going to have to do," the 61-year-old Clyde farmer responded as he waited for his order.

"Nebraska just kept putting wells in and putting wells in," he said. "They've never quit."

Now, in his view and in the view of other Kansas irrigators along the Republican's Kansas course, it's time for Nebraska to make things right.

The attempts of the two states to agree on a water-sharing strategy reached an important juncture in nearby Junction City Wednesday as Nebraska officials estimated they had fallen at least 28,000 acre feet short of meeting the terms of the Republican River Compact in 2006.

There are more annual deficits stretching back to 2003.

That news, delivered at the annual meeting of the Republican River Compact Administration, did not catch Kansas Attorney General Paul Morrison in a conciliatory mood.

In Associated Press reports, Morrison promised his state would be "fairly quick and fairly decisive to begin the process of enforcing the agreement."

Whether the matter goes to court or not, other recent disputes between states over water suggest that Nebraska could be looking at a bill for damages of \$100 million or more.

David Aiken, a water-law specialist at the University of Nebraska-Lincoln, thinks he heard Morrison loud and clear.

The message should also be pointed enough to get through to Nebraska farmers who irrigate in the Republican River Valley and to natural resources districts who control groundwater irrigation from Imperial, Curtis and Alma, Aiken said.

"This is cram-down time," Aiken said, "cram-down time for the NRDs.

"And the state of Nebraska, or the state of Kansas, or some combination thereof is going to say, 'You guys either agree to do what the governor (Heineman) has recommended in terms of groundwater pumping — which is cut way back — or the state of Nebraska is going to go over your heads and do it for you.'"

Although he's not the only one, Jim Miller is in the fairly small grouping that irrigates with Republican River water on both sides of the state border.

possibilities for humorous interpretation have not escaped him.

"I don't like suing myself," the former Guide Rock school teacher said as he warned of poison ivy and led the way down to the banks of the river near the Hardy, Neb., bridge. "I don't want to sue myself. I haven't so far."

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But Miller lives on the Nebraska side of the river and most of his irrigated acres are on the Nebraska side.

In more serious mode, he's quick to dispute Kansas contentions that the river's less-than-inspiring 2-foot depth at the border is all about groundwater wells depleting the surface flow.

"Not of people would have you believe that well irrigation is the sole culprit in the lack of water in the Republican," Miller said. "But you can't blame it on deep-well irrigation 100 percent."

A multi-year drought has been a factor. And no-till farming, soil terraces and other soil and water conservation measures have slowed runoff from the river's Colorado origins to its entry into the Kansas River at Junction City.

Miller, one of three board members who oversee surface-water irrigation for the Bostwick Irrigation District from Red Cloud, thinks Kansas needs to be more understanding.

He compared the situation to one in which a judge might be asked to adjust child support payments.

"Doggone it, if your job changes or your income changes, you go back and ask for a change."

Many of the less than accommodating attitudes of Miller's counterparts in Kansas are based on a fundamental difference in how water use is governed in the two states.

From the very early going, Kansas regulated both surface and ground water from the state level and in what many have seen as a more aggressive fashion.

Nebraska, much more blessed with groundwater resources, divided the responsibility. The state had its say on rivers and streams. Twenty-three natural resources districts and their locally elected boards made the rules for wells.

Not until recently has Nebraska grappled with the depleting effect well pumping has had on the Republican, the Platte, the Niobrara and other rivers and their tributaries.

Scandia, Kan., irrigator Mike Brzon, who has not been able to use some of his Republican River pumps this year because of low flows, is not a model of tolerance on that point.

Brzon, also chairman of the 300-member the Lower Republican Water Association, said the supply relationship between surface water and wells drilled in the same watersheds is "a no brainer."

Facing the nearby river from a lawn chair in front of his house, he listens patiently to points made about drought and diminished runoff. Then he offers a perspective that also takes into account Nebraska's reputation for rapid expansion in groundwater pumping.

In assessing the Republican's shallow contents, he said, "I think what we're actually seeing is a time lag on consumptive use of the river flow."

Those who live along the middle and lower reaches of the Republican in Nebraska are quick to point out that a well-drilling moratorium already in place farther upstream has been extended to its exit point at Hardy.

Groundwater allocation rules also have been enacted, and the state has spent millions of dollars over the past two years to buy Republican water and release it to Kansas.

As he offers a tour of his irrigation holdings, Brzon said it's all too little and too late.

Has the time come for a lawsuit?

"It depends on how much more lip service we'll put up with," he said.

The fact is that Kansas is not getting the 40 percent share of water it was supposed to get under the terms of a 1943 compact.

Those terms need to be enforced, he said. It's not any different than a landlord-tenant contract in agriculture.

How would you expect one partner to respond, Brzon asked, if the other said: "I'm going to keep farming the farm, but I'm not going to pay you any more."

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At Scandia's T.A.G. Grill and Bar, an afternoon coffee group of farmers, retired farmers and others in between makes room for another chair for questions about where resolution of Republican River differences is headed.

As other heads nod, Bill Waite and Glenn Loring describe a situation in which Nebraska kept drilling wells for year-round use along the Republican long after Kansas adopted a more conservative approach.

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Kansas' braking tactics included earlier metering of pumping, Waite and Loring said, and junior rights wells, which had to be shut off when the river reached a minimum flow.

Is this lawsuit time?

Whatever it takes," said Waite.

His coffee counterparts chuckle at his parting advice.

"Keep the water coming down here now."

While Kansas Attorney General Morrison promises quick and decisive action, things don't seem to be moving along quite so quickly or decisively north of the border.

Ann Bleed, director of the Nebraska Department of Natural Resources, is trying to appease irrigators and NRDs who see a major threat to their economic well-being.

"As far as I'm concerned, we're working on it," Bleed said. "I'm just optimistic and very hopeful that we can pull together what we need to do to comply with the compact."

UNL observers Aiken and Mike Jess, associate director of the school's Water Center, cite state proposals to cut back groundwater allocations in the Republican NRDs to 6.5-8.5 inches in normal years and 3.5-5.5 inches in dry years.

That's much less than irrigators typically use on corn in dry years.

Dan Smith, manager of the Middle Republican at Curtis, said actions plans at the local level are centered on 60 inches over five years.

"If everybody pumped 12 inches in an average year, we'd be slightly over (the limit)," Smith said. "But yearly compliance is not a requirement of the settlement. A five-year rolling average of compliance is. So the fact we overuse in one year is not a big deal."

Jess described the lower numbers as "a bit more realistic, given what the compact commissioners heard this week."

Bleed said there's nothing on the table that would allow for annual water use as high as 12 inches from wells.

Groundwater allocations have to be cut somewhere between 4 and 5 inches," she said. "And the key there is that we're also providing water to surface water users, who have a right to use water."

Jess, former director of what used to be the Nebraska Department of Water Resources, is not inclined to regard Morrison's remarks as just more legal saber rattling.

"It seems to me what he's saying should be seen as somewhat ominous in the state of Nebraska," he said, "and I think we have to take it very seriously."

That suggests that, even though summer may be about over, the heat could linger along the Republican River for a long time.

"My expectation is that the Kansas attorney general will file something fairly soon," Jess said, "and that we're very likely to be talking about money damages, because Nebraska didn't comply with the requirements."

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